

3<sup>rd</sup> Q 11/5

303000

4910-15-U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-13

[CGD01-04-101]

RIN 1625-AA87

Security Zones; Democratic National Convention Events,  
Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

---

SUMMARY: The Coast Guard is establishing three temporary security zones in the following locations: around Pier 4 at the Charlestown Navy Yard; in a portion of the Charles River west of the Boston Museum of Science, and in Boston Inner Harbor along the Boston waterfront between the Charlestown Bridge and Pier 1 at the U.S. Coast Guard Base. These temporary security zones are needed to safeguard United States Secret Service (USSS) designated protectees, as well as other government officials from potential terrorist and or subversive acts during events taking place during the Democratic National Convention (DNC), a National Special Security Event (NSSE) being held in Boston from July 26, 2004 to July 29, 2004. These security zones will prohibit entry into or movement within certain portions of the

AUG 5 2004 #3052 K.K.

Charles River and Boston Inner Harbor during the specified closure periods.

DATES: This rule is effective from 11:30 a.m. EDT, on July 28, 2004 until 9:30 a.m. EDT, on July 30, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-04-101) and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between 8 A.M. and 3 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Waterways Safety and Response Division, Marine Safety Office Boston, at (617) 223-3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the short notice request from the USSS regarding the need for these zones, publishing an NPRM was not possible. Prompt action was necessary to protect former presidents and their spouses, the Democratic nominee for president and vice president, their spouses, and particular U.S. Congressmen, as well as other government officials,

while attending certain special events at the Charlestown Navy Yard, The Boston Museum of Science, and along the Boston waterfront. Any delay encountered in this rule's effective date would be contrary to public interest for the reasons cited above. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Any delay encountered in this rule's effective date would be contrary to public interest since immediate action is needed to protect former presidents and their spouses, the Democratic nominee for president and vice president, their spouses, particular U.S. Congressmen, and other government officials, from potential acts of terrorism.

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, and the continuing concern for future terrorist and or subversive acts against the United States, especially at events where a large number of persons or government officials are likely to attend or congregate, the Coast Guard is establishing temporary security zones in conjunction with DNC events that specified USSS protectees will attend. These security zones include areas: around Pier 4 at the Charlestown Navy Yard; in the Charles River west of the Boston Museum of Science, and along the Boston waterfront between the Charlestown Bridge

and Pier 1 at the U.S. Coast Guard Base, Boston Inner Harbor, Boston, Massachusetts.

The Captain of the Port Boston, Massachusetts will notify the maritime community via marine broadcasts while the security zones are in effect.

No person or vessel may enter or remain in the prescribed security zones at any time without permission of the Captain of the Port. Each person or vessel in a security zone shall obey any direction or order of the COTP, or the designated Coast Guard on-scene representative. The COTP may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the COTP. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine for not more than \$250,000 for an individual and \$500,000 for an organization), *in rem* liability against the offending vessel and license sanctions. This rule is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the "Magnuson Act") and implementing regulations promulgated by the President in Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

#### Discussion of Rule

The first temporary security zone is established in the waters of Boston Inner Harbor extending 150 yards in all directions around the structure of Pier 4, Charlestown Navy Yard, from 11:30 a.m. EDT on July 28, 2004 to 4:00 p.m. EDT on July 28, 2004.

The second temporary security zone is established in the Charles River, in the vicinity of the Boston Museum of Science, which will extend from the western edge of the Museum of Science structure to a line 100 yards west of and parallel to the structure. This zone will be in effect from

9:00 p.m. EDT on July 29, 2004, to 2:00 a.m. EDT on July 30, 2004.

The third temporary security zone will be established in Boston Inner Harbor, extending 100 yards seaward from the shoreline between the Charlestown Bridge and the northern edge of Pier 1 at the U.S. Coast Guard Base, from 5:00 a.m. EDT on July 30, 2004 to 9:30 a.m. EDT on July 30, 2004.

Marine traffic may transit safely outside of the security zones thereby allowing navigation of Boston Harbor except for the portions delineated by this rule. All marine traffic transiting the Charles River will be prohibited from transiting this area while this zone is in effect. However, the pre-existing security zone, described in 33 C.F.R. § 165.T01-002(a)(1) and in effect between the Museum of Science structure and 50 yards east of the Charlestown Bridge, already prohibits vessels from transiting upstream or downstream of the Charles River during this period. Therefore, vessel traffic will not encounter significant additional restrictions due to this rule.

Due to the location of these Boston Inner Harbor zones outside the main ship channel, the Captain of the Port anticipates minimal negative impact on vessel traffic due to these zones. Additionally, marine traffic may safely transit after the effective period of these security zones

expires. Public notifications will be made during the effective periods via marine information broadcasts and local notice to mariners.

#### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Although this regulation will temporarily prevent traffic from transiting a portion of Boston Inner Harbor and the Charles River during the specified periods, the effects of this regulation will be minimized based on several factors: Vessels may transit outside the security zones; the security zones will be in effect for only limited periods of time; a previously established temporary security zone already restricts a portion of Boston Inner Harbor and the Charles River; and notice to waterways users will be made via safety marine information broadcasts.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in these security zones during this period. However, this rule will not have a significant economic impact on a substantial number of small entities due to the: limited amount of time that vessels will be restricted from the areas of the zones; vessels' ability to pass safely around the zones; and advance notifications which will be made to the local maritime community by marine information broadcasts.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want

to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Daniel Dugery Waterways Safety and Response, Marine Safety Office Boston, (617) 223-3000.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either

preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Safety measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T04-101 to read as follows:

§ 165.T04-101 Security Zones; Democratic National Convention Events, Boston, MA.

(a) Location. The following areas are security zones:

(1) All navigable waters of Boston Inner Harbor, 150 yards in all directions around Pier 4, Charlestown Navy Yard.

(2) All navigable waters of the Charles River 100 yards west of the Boston Museum of Science.

(3) All waters of Boston Inner Harbor along the Boston waterfront from shoreline out to a point 100 yards from the shore between the Charlestown Bridge and the northern edge of Pier 1 at the Coast Guard Base in Boston.

(b) Regulations. (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Boston.

(2) All persons and vessels must comply with the instructions of the Captain of the Port or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(c) Authority. In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

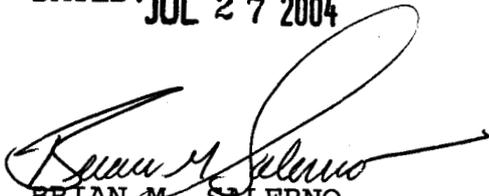
(d) Enforcement Period. This section will be enforced from:

(1) 11:30 a.m. EDT, on July 28, 2004, until 4:00 p.m. EDT, on July 28, 2004 with respect to the Pier 4 Charlestown Navy Yard Zone.

(2) 9:00 p.m. EDT, on July 29, 2004, until 2:00 a.m. EDT, on July 30, 2004, with respect to the Boston Museum of Science Zone.

(3) 5:00 a.m. EDT on July 30, 2004, until 9:30 a.m. EDT, on 30 July 2004, with respect to the Boston Shoreline Zone.

DATED: JUL 27 2004



BRIAN M. SALERNO  
Captain, U. S. Coast Guard  
Captain of the Port  
Boston, Massachusetts